

**EXHIBIT E**

**December 15, 2020 Hearing Transcript**

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN PENNSYLVANIA

3 Case No. 01-01139

4 - - - - - x

5 In the Matter of:

6

7 W.R. GRACE & CO., et al.,

8

9 Debtors.

10 - - - - - x

11

12 United States Bankruptcy Court

13 Robert N.C. Nix Sr. Federal Courthouse

14 900 Market Street

15 Philadelphia, PA 19107

16

17 December 15, 2020

18 3:00 PM

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21 B E F O R E :

22 HON ASHELY M. CHAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO - JOAN RANIERI

1 HEARING re Request for Extension

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 PACHULSKI STANG ZIEHL & JONES LLP

4 Attorney for W.R. Grace & Co.

5 919 North Market Street, 17th Floor

6 Wilmington, DE 1980

7

8 BY: JAMES E. O'NEILL, ESQ. (TELEPHONICALLY)

9

10 THE LAW OFFICES OF ROGER HIGGINS LLC

11 Attorney for W.R. Grace & Co.

12 516 N Ogden Avenue, Suite 136

13 Chicago, IL 60642

14

15 BY: ROGER J. HIGGINS, ESQ. (TELEPHONICALLY)

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17 ALSO APPEARING TELEPHONICALLY:

18 VIKTORIYA SHPIGELMAN

19 GARY S. SMOLKER, pro se

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P R O C E E D I N G S

THE COURT: All right, call the parties in the --  
see who's on the line here.

CLERK: Well, there's one guest that Tasha has to  
get.

COURT REPORTER: All right, guest with the last  
four digits of your phone number 1984, can I have your last  
name, please?

MR. HIGGINS: Higgins, H-I-G-G-I-N-S, Roger  
Higgins, counsel for W.R. Grace.

COURT REPORTER: Thank you. All right.

THE COURT: We have Jamie O'Neill on the line yet?

COURT REPORTER: No.

THE COURT: We do not.

MR. HIGGINS: I don't believe so, Your Honor. And  
--

THE COURT: Okay.

MR. HIGGINS: Viktoriya Shpigelman will be also  
joining, too. Our --

CLERK: Shpigelman is on.

THE COURT: Okay.

CLERK: Shpigelman is on.

MR. HIGGINS: Okay, great.

MS. SHPIGELMAN: Yes, good morning, Your Honor.  
Viktoriya Shpigelman.

1 THE COURT: Okay. Good afternoon. All right, so  
2 we should -- and did you get the name of the claimant,  
3 Tasha, the pro se --

4 COURT REPORTER: We have on the line Mr. Higgins,  
5 Ms. Shpigelman -- sorry if I'm pronouncing that incorrect.  
6 I apologize -- and Mr. Smolker.

7 MR. SMOLKER: Correct.

8 THE COURT: Okay, so -- all right, great. So why  
9 don't we just give Mr. O'Neill a minute or two. He  
10 requested this call, so I'm sure he'll be with us shortly.  
11 One of you wants to --

12 MR. HIGGINS: Yes, he will, Your Honor. We just -  
13 - he and I just spoke a few minutes ago.

14 THE COURT: Oh, great. Okay. I've been having  
15 some conversations with my fellow judges about hearing for  
16 tomorrow. You know, we're set to have this big northeastern  
17 storm tomorrow and we have a Zoom trial at 2:00 p.m. and  
18 some of my other judge colleagues also have big hearings on  
19 for tomorrow and they're getting requests for extensions  
20 because of the snow storm.

21 But since we're all doing everything virtually,  
22 seems like an unusual request, right? Like, you're in your  
23 house. You're on your computer. Unless you get power  
24 disconnected, why couldn't you still do it, you know? It's  
25 like my kids are complaining that there's no snow days

1 anymore. You have to kind of question that.

2 MR. HIGGINS: Although, Your Honor, I was doing a  
3 mediation last week and was supposed to get on a mediation  
4 call -- I'm on the West Coast -- at 6:00 a.m. Pacific, 9:00  
5 a.m. and the power went out at 4:00 a.m. because a drunk  
6 driver took out two telephone poles.

7 THE COURT: Oh, no. Oh, my --

8 MR. HIGGINS: Yeah, yeah.

9 THE COURT: Well, that's a good excuse. That's  
10 like the dog ate my homework. I would excuse that.

11 COURT REPORTER: Mr. McNeill -- sorry, Mr. O'Neill  
12 was on the line --

13 THE COURT: Okay.

14 MR. O'NEILL: Yes, hi.

15 THE COURT: -- see me?

16 MR. O'NEILL: Good afternoon. Yes, hello.

17 THE COURT: All right. Great. So Tasha, do you  
18 want to start the recording and Joan, do you want to call  
19 the matter?

20 COURT REPORTER: We are recording.

21 CLERK: All right, this is the three o'clock  
22 status hearing on for Judge Chan for December the 15th.  
23 It's on W.R. Grace and Company. Could parties make their  
24 appearance, please?

25 MR. O'NEILL: Sure. This is James O'Neill,

1 Pachulski, Stang, Ziehl, and Jones, and I represent W.R.  
2 Grace. And I believe I'm joined today by my co-counsel in  
3 the matter Roger Higgins and also appearing my phone I  
4 believe is our client, Viktoriya Shpigelman from Grace.

5 MR. SMOLKER: And I'm on the call. So, my name is  
6 Gary Smolker. I'm representing myself.

7 THE COURT: Okay. Well, Mr. O'Neill, you called  
8 this status hearing, so I'll let you proceed.

9 MR. O'NEILL: Thank you very much, Your Honor, and  
10 thank you so much for taking the time today on such very  
11 short notice, but I appreciate it.

12 THE COURT: No problem.

13 MR. O'NEILL: Your Honor, this is regarding the  
14 Smolker claim litigation and as Your Honor will recall, we  
15 have a scheduling order in place and briefing is ongoing.  
16 And we had a status hearing some time ago and after that  
17 time, there was an extension given and a status scheduling  
18 order put in place.

19 According to the scheduling order, Mr. Smolker was  
20 supposed to respond to Grace's motion for summary judgment  
21 on the 16th of December, and yesterday there was an exchange  
22 with Mr. Smolker between Mr. Smolker and Mr. Higgins and  
23 myself where Mr. Smolker asked for additional time to  
24 respond to the motion for summary judgment. And Mr. Higgins  
25 checked with our client and our client has been very



1 concerned with the delay in this matter and the scheduling  
2 accommodations made to date, and so Mr. Higgins responded to  
3 Mr. Smolker that we would not -- the client would not be  
4 willing to give a further extension of the December 16th  
5 deadline to file a response.

6 There was an exchange after that time between the  
7 parties and we thought, Your Honor, it might be prudent just  
8 to touch base with Your Honor to let you know where we were  
9 and to perhaps seek the Court's guidance with respect to  
10 scheduling issues.

11 And from our standpoint, Your Honor -- from  
12 Grace's standpoint, Your Honor, viewed in isolation, a  
13 request for a two-week extension is not an unreasonable  
14 request, but the concern that we have is that there have  
15 been several requests for extension and changes to the  
16 proposed schedule and we believe that we've been -- we've  
17 tried to accommodate Mr. Smolker with these requests and  
18 that kind of gets us to today.

19 We would, of course, be guided by whatever  
20 suggestion Your Honor has with respect to scheduling. If  
21 there is an extension, the only thing that Grace would want  
22 to be sure of was that it would have enough time to file its  
23 reply and the Court would have enough time in advance of any  
24 hearing to consider the reply and to prepare for the  
25 hearing. And ultimately, if there is a further extension

1 given, we would just want to make sure that whatever time is  
2 set now is going to stick.

3 So the concern that we have is that it's been a  
4 long time. We believe that we have been accommodating and  
5 we understand that things happen and that Mr. Smolker has  
6 reasons for requesting the extension, which he can explain  
7 to the Court. And as I said, Your Honor, viewed in  
8 isolation, a two-week extension is not an overwhelming or  
9 unreasonable extension.

10 It just is -- when you step back and look at the  
11 whole picture, it's been since August that we kind of  
12 expected that we'd be moving forward on this matter and we  
13 just want to make sure that if the schedule changes now and  
14 if things are pushed out further, that whatever new deadline  
15 is set is going to be the deadline so that we can move  
16 forward to try to get this matter resolved. And that's --  
17 those are our issues, you know.

18 THE COURT: Okay, thank you, Mr. O'Neill. So Mr.  
19 Smolker, it sounds like you need a two-week extension. Why  
20 is that, sir?

21 MR. SMOLKER: They've filed a 750-page, in the  
22 aggregate, motion and it requires me to look at voluminous  
23 documents and to make evidentiary objections to them and to  
24 -- and it's supported by, I believe, one declaration of  
25 Rosemary Lewis that I have to make objections to, and

1       there's just so much I want to object to, there wouldn't be  
2       enough time to write all my objections and to make my motion  
3       for objections and also I object to their request for  
4       judicial notice, which will take time.

5               And also they don't follow the rules for a summary  
6       judgment, so I have to kind of improvise because they didn't  
7       follow Rule 56 about how you're supposed to do a motion for  
8       summary judgment. And I have to make my statement of facts  
9       and provide references and as I read their thing, and I  
10      might've missed it, they don't even have a statement of  
11      facts in there, which I believe should be a separate  
12      document that would have numbers with what they claim are  
13      material facts that are undisputed.

14             And it's somewhat complicated -- actually, it's  
15      very complicated, and it could be simply said that I'm right  
16      and they're wrong, but I'd rather go into the details. Also  
17      I have a medical problem. When I was done with the hearing  
18      on the 17th -- and let me go back one second -- there  
19      haven't been requests for continuances. What happened was  
20      they filed a motion and they said in their motion that I was  
21      supposed to respond to their motion in a one-week time,  
22      which I thought was completely crazy. So -- whatever time  
23      it was. it was some very abbreviated time.

24             So I filed my response and I put in my response  
25      there wasn't time to respond to these 750 pages. The next

1 thing I know or knew was Grace's attorney contacted me and  
2 said the Court would like us to work out an extension of  
3 time so you can have more time to respond. Well, in the one  
4 week or however much time they told me I had to respond --  
5 and I did prepare to respond -- I couldn't read all 750  
6 pages. So I gave them a time and they wouldn't agree with  
7 the time so they made us have a status conference in front  
8 of you and that's how we got to the status conference.

9 Okay. Now --

10 THE COURT: So Mr. Smolker -- Mr. Smolker, hold on  
11 one second. So can I just tell you what I find concerning  
12 at this point, is that when we last met telephonically at  
13 the last hearing in October, we had agreed on a scheduling  
14 order which you wanted, you know, a lengthy amount of time  
15 for your response, and I gave you, you know, two months from  
16 the date of our hearing for you to respond to the 700-plus  
17 page motion. For you to now make a request on the eve of  
18 the deadline by which you're supposed to file your response  
19 -- because your deadline right now under the scheduling  
20 order that I'm looking at is December 16, 2020. It's  
21 December 15th.

22 So for you do now tell me that the reason why you  
23 can't respond is because of the 700-page document, is not  
24 sitting well with me because you knew back in October when  
25 we first had this discussion that it was a 700-page

1 document. So again, I ask you, why at the last minute do  
2 you require this extension? What's happened since we last  
3 met that's prevented you from working on your response?

4 MR. SMOLKER: Okay. I -- as I was about to say,  
5 had medical problems. When I was done with the hearing on  
6 the 17th, within an hour, I had blood in my eye, a blood  
7 vein in my eye broke, and I went to my eye doctor and had  
8 that dealt with and I could look up my blood pressure. I  
9 guess it was like 160 or 180 over something. Was pretty  
10 incredible. And so I had to do things, and I got a -- I  
11 went to a pulmonologist because I have breathing problems  
12 and I discovered that I have lung damage.

13 And I took a test and he found out that my  
14 saturated blood oxygen is below 90 many times during the  
15 night, which is very dangerous. And so I spent the first  
16 month looking into different things for how to deal with my  
17 heart and give my doctor enough information to he could deal  
18 with it, and then I had to look up all these federal rules  
19 because I don't practice in federal court or in federal  
20 bankruptcy court, and then I started reading all their  
21 things, and I notice when I read all their things that I  
22 have all kinds of objections and evidence to present and  
23 it's not practical due to the volume of it.

24 And yes, I did know that there was 750 pages, but  
25 I didn't know what the 750 pages said because they only gave

1 me a week to respond and I didn't read the 750 pages in that  
2 week. I just got to the nitty gritty of why their thing  
3 shouldn't be granted. And this is --

4 THE COURT: Well --

5 MR. SMOLKER: My opposition --

6 THE COURT: Okay.

7 MR. SMOLKER: -- me to review the voluminous  
8 documents, which I had to do, and to prepare objections to  
9 the evidence they proffered. I didn't know how much  
10 evidence I would have to object to and it required me to  
11 refer to the federal bankruptcy code and the federal rules  
12 of bankruptcy procedure. I wasn't familiar with those. I  
13 went and bought books so that I could see what the  
14 procedures were. And then I had to review the United States  
15 Code. I didn't know what the United States Code.

16 Then I had to look at the local rules of  
17 bankruptcy for the Delaware court and then I had to prepare  
18 my own papers, including my statement of facts and the  
19 statement of my disagreements. I didn't know how many  
20 things I would disagree with or how many facts they wouldn't  
21 state, and now I do.

22 THE COURT: Well --

23 MR. SMOLKER: So now I'm --

24 THE COURT: Mr. Smolker, again -- so this is my  
25 concern. My concern is that the motion for summary judgment

1 was filed on August 3rd, 2020. It's been four months since  
2 the motion was filed. I was trying to give you a very  
3 generous extension and when we last met and we agreed to the  
4 dates, it was my understanding that when you agreed to those  
5 dates you understood that you had the two months in which to  
6 get all of this done, and --

7 MR. SMOLKER: Yes, but I didn't know what my lung  
8 condition was and I didn't know what kind of problems I  
9 would have and I didn't know that I would have to spend a  
10 month putting together medical records for my pulmonologist  
11 to work on and getting involved in different breathing  
12 exercises. I didn't know how much time my personal health  
13 would take up or how disabled I would be. I just thought I  
14 would be able to go forward. I didn't realize how disabled  
15 I was and how much information I had to give my  
16 pulmonologist.

17 And for example, I'm supposed to see a  
18 cardiologist to get a stress exam, and I couldn't make an  
19 appointment to see the cardiologist because I've been too  
20 busy working on this.

21 THE COURT: So Mr. Smolker, I'd like to just --  
22 I'd like you to understand what's facing me, which is that  
23 when this first came to me that the motion for summary  
24 judgment and you asked me for an extension, normally I would  
25 give a party on average about three weeks, maybe a month if

1 it was an extensive motion for summary judgment. But for  
2 you, given that you were pro se and the length of the motion  
3 for summary judgment, I really wanted to give you enough  
4 time to do this.

5 And while I know that you must have some health  
6 concerns that you must attend to, right, the other side also  
7 has rights. I have to move the case along for them, too,  
8 right? It can't all be about what your concerns are, health  
9 concerns are, legal concerns are, getting through all the  
10 documents and understanding the legalese, but I have to  
11 balance that against W.R. Grace. So I'm trying to do the  
12 best I can, right. I can't just give you whatever time you  
13 may need because they have due process concerns. They  
14 didn't want me to give you that lengthy extension until  
15 December, but I did it for you.

16 MR. SMOLKER: (indiscernible).

17 THE COURT: And what I'm concerned about is that  
18 after I tried to show you this deference for you to come to  
19 them at the very last moment and ask for this extension, it  
20 jams me up, right, because you're basically telling me now  
21 that it's December 15th and although you had agreed to a  
22 scheduling order which required you to file something by  
23 tomorrow, if I deny your request for an extension, I'm  
24 basically -- I don't know if you've been working on your  
25 response, but you're putting me in the very uncomfortable



1 position of forcing you to file a pleading which is  
2 something that -- in a state which you would argue, I  
3 believe, is deficient.

4 I want you to have an opportunity to give them a  
5 fulsome response so that when I consider this and determine  
6 the matter, I have all of the facts and all of the law  
7 before me and by asking this on the eve of the hearing,  
8 you're forcing my hand and I just want you to know that I  
9 don't appreciate it. Whatever health concerns you may have  
10 had, is something that I would've hoped you would've gone to  
11 Mr. O'Neill with weeks ago to say, listen, Mr. O'Neill, I  
12 know I agreed to this in the scheduling order, but I have  
13 the following issues.

14 And by the way, when litigants come to me and tell  
15 me that they have medical issues, it wouldn't be entirely  
16 unreasonable for Mr. O'Neill to say, with all due respect,  
17 Mr. Smolker, I'll need to see some evidence that you  
18 actually --

19 MR. SMOLKER: (indiscernible).

20 THE COURT: -- going --

21 MR. SMOLKER: I did show in my --

22 THE COURT: Okay, but just -- if you could just  
23 let me finish, Mr. Smolker. So at this point, given all of  
24 that, this is what I'm going to do, Mr. Smolker. I'm going  
25 to give you your requested two-week extension, but let's be

1 clear about this. I'm not adjourning that extension for any  
2 reason at all -- at all. You'll need to make sure that your  
3 response is filed and served upon Mr. O'Neill two weeks from  
4 tomorrow. So Joan, let's just talk about the date --

5 MR. O'NEILL: The 30th.

6 THE COURT: Yes. You have until December 30th to  
7 file that. I don't want to hear any excuses about any  
8 problems getting that brief on file. That is your last  
9 extension. Now, Mr. O'Neill, I understand your concerns and  
10 looking at the scheduling order now, it looks like your  
11 reply is due -- I'm just pulling this up now. It looks like  
12 --

13 MR. SMOLKER: Your Honor?

14 THE COURT: -- your reply is due on January --  
15 yes, Mr. Smolker.

16 MR. SMOLKER: Your Honor?

17 THE COURT: Yes. Yes, Mr. Smolker.

18 MR. SMOLKER: In my letter when I requested it, I  
19 gave him the date which would be 14 days later for him to  
20 file his response and I gave him the dates that we could  
21 either move your hearing date 14 days or we could have it on  
22 the same day as you scheduled another hearing, which I think  
23 is March 25th. So would you like me to give you the date?

24 THE COURT: No, no, no. What I want you to do is  
25 I want you to not talk because I want to talk to Mr. O'Neill

1 right now. So Mr. O'Neill, right now the scheduling order  
2 currently has your reply due on January 6 and it sounds like  
3 we have a telephonic hearing on the motion for summary  
4 judgment on January 21st at 1 p.m. eastern time. So Mr.  
5 O'Neill, I think I heard you say that you don't want to have  
6 the summary judgment hearing moved. Is that correct?

7 MR. O'NEILL: Well, Your Honor, it's going to be  
8 up to you because we -- I don't want to put the Court at a  
9 disadvantage. If we move our deadline to two weeks, to the  
10 20th, we could definitely one day before the scheduled,  
11 hearing, we could move the hearing for two weeks, too, if  
12 the Court was available and it works for all of the parties.

13 THE COURT: Right. Well, I'm trying to be  
14 accommodating to you because I understand your concern. So  
15 I guess my first question is, when do you want to file your  
16 reply? Obviously, you don't want to file it January 6th,  
17 I'm assuming. So do you want to file it January 6th -- or  
18 any time up to and including January 20th. What date would  
19 you like, understanding that whatever date you pick, I'm  
20 going to have -- I need a little time to review everything,  
21 but I'll try and keep it as short as possible. So when do  
22 you think you could file your reply?

23 MR. O'NEILL: Of course, Your Honor, and I'm --

24 THE COURT: When do you want to file?

25 MR. O'NEILL: Forgive me for negotiating in front

1 of everybody, but if Mr. Higgins is on the phone, we --

2 MR. HIGGINS: I am.

3 MR. O'NEILL: -- had talked about perhaps having a  
4 similar extension so we would, I guess, take a two-week  
5 extension to the 20th, if -- Mr. Higgins, if you think that  
6 that is the appropriate date, or if there's another date,  
7 say so.

8 MR. HIGGINS: Yes, Your Honor. At the risk of  
9 making some sausage, the 20th would be fine for us and then  
10 we would make ourselves available for hearing at your  
11 convenience.

12 THE COURT: Okay. So Mr. O'Neill, if you could  
13 revise the prior scheduling order to reflect that Mr.  
14 Smolker now is going to have this two-week extension which  
15 will bring us to December 30th, okay, you'll prepare the  
16 revised scheduling order to put that as his new and final  
17 deadline to oppose summary judgment and that would make your  
18 two-week deadline to file your reply now January 20th.

19 Joan, I'm looking at my calendar and it looks like  
20 we have the (indiscernible) hearing at ten o'clock on the  
21 28th. Is that right, Joan?

22 CLERK: That's right, yeah.

23 THE COURT: And that'll take all day, and we still  
24 have the Michael -- the Hammond. I have the Hammond --

25 CLERK: --29th.

1 THE COURT: -- claim objection scheduled for the  
2 29th. Okay.

3 CLERK: Yep.

4 THE COURT: Let me see.

5 CLERK: On the 4th, you have Lewis and on the 5th  
6 you have (indiscernible).

7 THE COURT: Okay. So what about the 1st. Monday,  
8 February 1st. I have an appointment at ten o'clock, but I  
9 could start as early as 11:30 on Monday, February 1st. If  
10 everyone could look at their calendars and tell me if they  
11 have availability on Monday, February 1st, please.

12 MR. SMOLKER: I'm available. Gary Smolker is  
13 available.

14 THE COURT: Okay.

15 MR. HIGGINS: Your Honor, this is Roger Higgins.  
16 I am available then and I will ask our client, Ms.  
17 Shpigelman, if she's available that day.

18 THE COURT: Okay. Mr. O'Neill?

19 MR. O'NEILL: Yes, Your Honor. I'm available on  
20 that day.

21 THE COURT: Okay. So why don't you put forward  
22 the revised scheduling order, which I will sign, and I just  
23 note for the record that in Paragraph 3 of the current  
24 scheduling order, you've got my first name misspelled. I  
25 know I've got an unusual first spelling, but there's an

1 extra E in there. I think you were trying to cover  
2 yourself. It's just A-S-H-E-L-Y.

3 MR. SMOLKER: Oh, E-L-Y? I got --

4 THE COURT: Yes.

5 MR. SMOLKER: A-S-H-E-L-Y?

6 THE COURT: Yes. I don't think there's any other  
7 person in the world with that spelling, so that's my cross  
8 to bear in the world. But it's correct on the signature  
9 line, it just is incorrect on Paragraph 3. So if you guys  
10 want to correct that, add in those new dates, file that, and  
11 maybe you could just, I guess -- do you have Ms. Ranieri's -  
12 - Joan Ranieri's information? Because if you just email --

13 MR. O'NEILL: I do, Your Honor.

14 THE COURT: -- it to her, she can email it to me  
15 and then -- yeah, and then we can just --

16 MR. O'NEILL: I'm fine --

17 THE COURT: -- send that down to Delaware after I  
18 sign it. Okay, great. All right. Does anyone else have  
19 any other question --

20 MR. SMOLKER: I do. What time on Monday?

21 THE COURT: Okay, well I was going to say 11  
22 o'clock, but I know you're in California, Mr. Smolker. Is  
23 that okay? Can you do that by 8 or do you want me to push  
24 it back a little bit?

25 MR. SMOLKER: I would prefer doing it at nine, but

1 I could be here by eight.

2 THE COURT: Okay, so let's get the hearing, Mr.  
3 O'Neill, at noon on February 1st. Okay? And we'll still  
4 have the same telephonic information for the argument.

5 MR. O'NEILL: Okay.

6 MR. SMOLKER: I have something else.

7 THE COURT: Yes, Mr. Smolker.

8 MR. SMOLKER: Would you like a courtesy copy of my  
9 papers?

10 THE COURT: No. If you file it with the Court,  
11 I'll get a copy.

12 MR. SMOLKER: Okay.

13 THE COURT: Okay? All right. Well, I look  
14 forward to reading your response and the reply and then I'll  
15 talk to all of you gentlemen on February 1st. Okay,  
16 everybody?

17 MR. SMOLKER: Thank you, Your Honor.

18 MR. O'NEILL: Thank you very much, Your Honor.

19 THE COURT: You're welcome. Okay --

20 MR. O'NEILL: Okay. Bye bye.

21 (Concluded at 3:26 PM)

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I N D E X

RULINGS

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Request for Extension Granted	16	25



C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

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